

1 EDMUND G. BROWN JR., Attorney General  
of the State of California

2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General

3 RITA M. LANE, State Bar No. 171352  
Deputy Attorney General

4 110 West "A" Street, Suite 1100  
San Diego, CA 92101

5 P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2614  
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9  
10 **BEFORE THE**  
**BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. 3215

13 SANDRA J. COLE  
7548 Ridgeway Drive  
14 Buena Park, CA 90620

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Pharmacy, Department of  
21 Consumer Affairs.

22 2. On or about November 16, 2007, the Board of Pharmacy, Department of  
23 Consumer Affairs received an application for Registration as a Pharmacy Technician from  
24 Sandra J. Cole (Respondent). On or about November 12, 2007, Sandra J. Cole certified under  
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
26 application. The Board of Pharmacy denied the application on May 30, 2008.

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3. This Statement of Issues is brought before the Board of Pharmacy

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(2) Conviction of a crime.

5. Section 480 of the Code states:

1. Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

3. Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

6. Section 482 of the Code states:

(a) Considering the denial of a license by the board under Section 480.

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2 7. Section 492 of the Code states:

3 Notwithstanding any other provision of law, successful completion of any  
4 diversion program under the Penal Code, or successful completion of an alcohol  
5 and drug problem assessment program under Article 5 (commencing with section  
6 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit  
7 any agency established under Division 2 ([Healing Arts] commencing with  
8 Section 500) of this code, or any initiative act referred to in that division, from  
9 taking disciplinary action against a licensee or from denying a license for  
10 professional misconduct, notwithstanding that evidence of that misconduct may  
11 be recorded in a record pertaining to an arrest.

12 This section shall not be construed to apply to any drug diversion program  
13 operated by any agency established under Division 2 (commencing with Section  
14 500) of this code, or any initiative act referred to in that division.

15 8. Section 493 of the Code states:

16 Notwithstanding any other provision of law, in a proceeding conducted by  
17 a board within the department pursuant to law to deny an application for a license  
18 or to suspend or revoke a license or otherwise take disciplinary action against a  
19 person who holds a license, upon the ground that the applicant or the licensee has  
20 been convicted of a crime substantially related to the qualifications, functions,  
21 and duties of the licensee in question, the record of conviction of the crime shall  
22 be conclusive evidence of the fact that the conviction occurred, but only of that  
23 fact, and the board may inquire into the circumstances surrounding the  
24 commission of the crime in order to fix the degree of discipline or to determine if  
25 the conviction is substantially related to the qualifications, functions, and duties  
26 of the licensee in question.

27 9. Section 4060 of the Code states:

28 No person shall possess any controlled substance, except that furnished to  
a person upon the prescription of a physician, dentist, podiatrist, optometrist,  
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished  
pursuant to a drug order issued by a certified nurse-midwife pursuant to Section  
2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant  
pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or  
a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause  
(iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052.  
This section shall not apply to the possession of any controlled substance by a  
manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,  
optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse  
practitioner, or physician assistant, when in stock in containers correctly labeled  
with the name and address of the supplier or producer.

10. Section 4300 of the Code states in pertinent part:

...

(c) The board may refuse a license to any applicant guilty of  
unprofessional conduct. The board may, in its sole discretion, issue a  
probationary license to any applicant for a license who is guilty of unprofessional  
conduct and who has met all other requirements for licensure.

11. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.

12. California Code of Regulations (CCR), title 16, section 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

13. CCR section 1770 states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

#### FIRST CAUSE FOR DENIAL OF APPLICATION

(May 15, 2001 Conviction of a Crime-Possession of a Controlled Substance)

14. Respondent's application is subject to denial under Code sections 475(a)(2) and 480(a)(1) in that she was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician. The circumstances are as follows:

1           a.       On or about May 15, 2001, Respondent pled guilty to a violation of Health  
2 and Safety Code sections 11377(a) (Possession of a Controlled Substance) a felony, and  
3 11379(a) (Sale or Transportation of a Controlled Substance), a felony, in the criminal proceeding  
4 entitled *People vs. Sandra Jane Cole*, Orange County Superior Court, West Justice Center, Case  
5 Number CY00WF0778.

6           b.       On July 13, 2001, Respondent was sentenced to three years formal  
7 probation; committed to the custody of the county jail for 90 days; ordered to submit to drug  
8 testing; pay a \$200 restitution fine; and pay a \$50 controlled substance lab fee.

9           c.       The circumstances of the crime are that on March 6, 2000, while  
10 Respondent was driving her friend's vehicle, she was pulled over by a police unit for expired  
11 registration on the vehicle's license plate. While the police officer was talking to Respondent  
12 she became very nervous. Respondent gave the officer permission to search the vehicle and her  
13 purse. The officer found methamphetamine in Respondent's purse.

#### 14                               SECOND CAUSE FOR DENIAL OF APPLICATION

15                       (Conviction of a Crime Substantially Related to The Practice of Pharmacy)

16           15.       Respondent's application is subject to denial for unprofessional conduct  
17 under section 493 in that Respondent was convicted of a crime substantially related to the  
18 qualifications, functions, and duties of a Pharmacy Technician in that she was in possession of  
19 methamphetamine. The circumstances are set forth in paragraph 14 above, which are realleged  
20 and incorporated herein by reference.

#### 21                               THIRD CAUSE FOR DENIAL OF APPLICATION

22                       (Commission of An Act Which, if Done By a Licensee, Would Be Grounds For  
23 Suspension or Revocation of License - Possession of Controlled Substances)

24           16.       Respondent's application is subject to denial under Code sections  
25 475(a)(4), 480(a)(3), and 4301(j) for commission of an act which, if done by a licensee, would  
26 be grounds for suspension or revocation of license, in that Respondent violated state laws by  
27 being in possession of controlled substances in violation of Code section 4060 and Health and  
28 Safety Code section 11377(a). The circumstances are as follows:

1                   17.     On or about February 3, 2005 in the County of Buena Park, Respondent  
2 was arrested for having a controlled substance in her possession. On or about September 21,  
3 2005, in the Orange County Superior Court, Case number 05NF1237FA, entitled *People v.*  
4 *Sandra Jane Cole*, Respondent pled guilty to Possession of a Controlled Substance in violation  
5 of Health and Safety Code section 11377(a), a felony. Imposition of the sentence was suspended  
6 and Respondent was placed on three (3) years formal probation to include: completion of a drug  
7 treatment program pursuant to Penal Code section 1210; random drug testing; attend one (1)  
8 Alcoholic Anonymous/Narcotics Anonymous meeting per day; pay \$20 security fee; pay \$50  
9 controlled substance lab fee; pay \$200 restitution fee; and a \$125 booking fee.

10                   b.     The circumstances of the crime are that on February 3, 2005, police  
11 detectives executed a search warrant at a residence where Respondent was staying. Respondent  
12 was present during the search. As a result of the search on the residence, detectives searched  
13 Respondent's purse. Respondent's purse contained numerous pieces of paperwork in her name,  
14 as well as her credit cards and driver's license. Detectives also found methamphetamine in  
15 Respondent's purse.

16                   c.     On July 14, 2006, Respondent petitioned the court to set aside her  
17 September 21, 2005 conviction for possession of a controlled substance. On July 14, 2006, the  
18 Orange County Superior Court set aside Respondent's conviction and her case was dismissed  
19 pursuant to Penal Code section 1210.1.

20                   18.     On or about March 6, 2000, Respondent was in possession of a controlled  
21 substance in that she had methamphetamine in her purse as more specifically set forth above in  
22 paragraph 14, which is realleged and incorporated herein by reference.

23                   FOURTH CAUSE FOR DENIAL OF APPLICATION

24                   (General Unprofessional Conduct)

25                   19.     Respondent's application is subject to denial for unprofessional conduct  
26 under section 4300(c) in that Respondent was convicted of a crime substantially related to the  
27 qualifications, functions, and duties of a Pharmacy Technician and that on two occasions,

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1 Respondent was in possession of controlled substances. The circumstances are set forth in  
2 paragraphs 14 and 17 above, which are realleged and incorporated herein by reference.

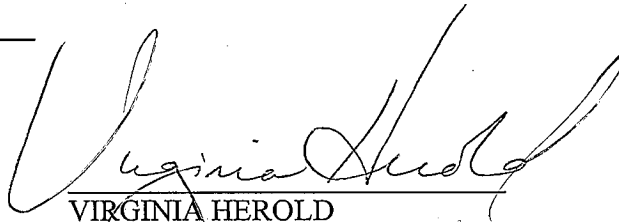
3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
5 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

6 1. Denying the application of Sandra J. Cole for a Registration as a  
7 Pharmacy Technician;

8 2. Taking such other and further action as deemed necessary and proper.

9 DATED: 11/14/08

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12 VIRGINIA HEROLD  
13 Executive Officer  
14 Board of Pharmacy  
15 Department of Consumer Affairs  
16 State of California  
17 Complainant

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